

1 Michael E. Piston
2 Attorney for the Plaintiffs
3 38-08 Union St., Suite 9A
4 Flushing, NY 11354
5 Phone: 646-876-3772
6 Fax: 206-770-6350
7 Email: michaelpiston4@gmail.com

8 UNITED STATES DISTRICT COURT
9
10 FOR THE EASTERN DISTRICT OF NEW YORK

11
12
13 MAMUN DEWAN

14 Plaintiff,

15 vs

16
17 ALEJANDRO MAYORKAS,
18 SECRETARY OF HOMELAND
19 SECURITY

20 DEPARTMENT OF HOMELAND
21 SECURITY

22 UNITED STATES CITIZENSHIP AND
23 IMMIGRATION SERVICES

24 Defendants

Case No.: 1:22-cv-04066-BMC

PLAINTIFF'S RESPONSE TO
MOTION TO DISMISS

25 **SUMMARY OF ARGUMENT**
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1 Plaintiff's action is not moot because he has a legally cognizable interest in
2 the outcome.
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5 **BRIEF STATEMENT OF RELEVANT FACTS**
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7 Mamun Dewan is the husband of Sultana Riaza and Lorin Mahsinara and
8 Maruf Dewan are their children. Mamun Dewan was granted asylum status by the
9 Defendants on August 7, 2019. He filed Forms I-730 to classify Lorin Mahsinara,
10 Sultana Riaza and Maruf Dewan as the relatives of an asylee on October 22, 2019,
11 and these petitions were assigned File Numbers SRC2003350358,
12 SRC2003350342 and SRC2003350350, respectively. ECF Doc. No. 1, PageID #:
13
14 3. Accordingly, the petitions pertaining to Lorin Mahsinara and Maruf Dewan
15 have both been pending for over three (3) years.
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18 On July 12, 2022, Mr. Dewan commenced this action asking this Court to
19 order Defendants to promptly adjudicate these petitions. ECF Doc. 1. On
20 September 8, 2022, the Defendants approved the petition filed upon behalf of
21 Sultana Riaza and issued Requests for Evidence pertaining to the other two
22 petitions. ECF Doc. Nos. 13-1- 13-3.
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25 On September 21, 2022, the USCIS received Mr. Dewan's response to both
26 Requests for Evidence. Exhibit A.
27

28 **ARGUMENT**

1 I. The plaintiff's action is not moot because he still has a legally cognizable
2 interest in the outcome

3 A case is moot, and accordingly the federal courts have no jurisdiction over
4 the litigation, when "'the parties lack a legally cognizable interest in the outcome.'" *Fox v. Bd. of Trs. of the State Univ.*, 42 F.3d 135, 140 (2d Cir. 1994),
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6
7 quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631(1979).
8

9 Here the plaintiff does in fact have a legally cognizable interest in the
10 outcome of this action. The relief sought in his Complaint, is that "the Court order
11 the Defendants to adjudicate Mamun Dewan's Forms I-730 as soon as reasonably
12 possible and, in any event, in no later than 30 days." ECF No. 1, PageID #: 7. The
13 defendants have yet to adjudicate two of the three petitions complained of by Mr.
14 Dewan. Nor can it be claimed that this is relief the Court cannot or should not grant
15 inasmuch as the defendants have now received all of the documents they indicated
16 in their Requests For Evidence were necessary to adjudicate both petitions.
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18 Accordingly, Mr. Dewan has a legally cognizable interest in the outcome of this
19 action and it is not moot.
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23 Many, if not most, or all, of the district court cases cited by the defendants
24 for the opposite proposition are distinguishable because in those actions the
25 defendants could not adjudicate plaintiff's benefit request because they were
26 awaiting plaintiff's further response, *e.g.*, *Sajib v. Renaud*, No. 21-cv-7039, 2022
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1 WL 1062319 (E.D.N.Y. Apr. 8, 2022), *Jun Lin v. Johnson*, No. 19-cv-2878, 2019
2 WL 3409486, (E.D.N.Y. Jul. 29, 2019), *Xu v. Nielsen*, No. 18-cv-02048, 2018 WL
3 2451202 (E.D.N.Y. May 31, 2018), *Lu v. Sessions*, No. 18-cv-01713, 2018 WL
4 2376304, (E.D.N.Y. May 24, 2018); *Meixian Ye v. Kelly*, No. 17-cv-3010, 2017
5 WL 2804932 (E.D.N.Y. Jun. 28, 2017). Plainly that is not the case here.
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9 In any event, to the extent that any of the cited cases by the defendants hold
10 that an action may become moot despite the plaintiff having a legally cognizable
11 interest in the outcome, they are contrary to Supreme Court and Second Circuit
12 precedent. “Federal and state courts are absolutely bound by vertical precedents—
13 those delivered by higher courts within the same jurisdiction”. Bryan A. Garner et
14 al., *The Law of Judicial Precedents* 27 (2016). *See Hutto v. Davis*, 454 U.S. 370,
15 375 (1982) (per curiam) (“[U]nless we wish anarchy to prevail within the federal
16 judicial system, a precedent of this Court must be followed by the lower federal
17 courts no matter how misguided the judges of those courts may think it to be.”). If
18 they do not so hold, they are immaterial to the issue here.
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23 CONCLUSION

24 The defendants’ motion to dismiss should be denied.
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27 Respectfully submitted September 23, 2022.
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1 /s/ *Michael E. Piston*

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3 Michael E. Piston
4 Attorney for the Plaintiff
5 38-08 Union St., Suite 9A
6 Flushing, NY 11354
7 Phone: 646-876-3772
8 Fax: 206-770-6350
9 Email: michaelpiston4@gmail.com
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